In the High Court of Judicature at Madras

Dated : 21.11.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1423 of 2007

Commissioner of Income Tax
Tamil Nadu-III, Madras. .. Appellant

Vs.

M/s.Pioneer Asia Packing (P) Limited
109/2, G.N.T.Road, Karanodai
Chennai - 600 067. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 7.3.2007 made in I.T.A.No.896/Mds/2003 for the assessment year 2000-01 against the order of the Commissioner of Income Tax (A) V Chennai-34 for the Assessment year 2000-2001 in ITA.No.181/2002-2003 dated 24.2.2003 against the assessment order of the Assistant Commissioner of Income Tax Company Circle V (2) Chennai in PAN.GIR.NO.52356 P for the assessment year 2000-2001.

For Appellant : Mrs.Pushya Sitaraman
Sr. Standing Counsel for Revenue

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY
K.RAVIRAJA PANDIAN, J

The appeal is filed against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 7.3.2007 made in I.T.A.No.896/Mds/2003 for the assessment year 2000-01.

2. The brief facts of the case as culled out from the statement of facts stated in the memorandum of appeal are as follows:

The assessee company is engaged in the business of packing and printing. For assessment year 2000-01, the assessee filed its return of income on 30.11.2000 declaring nil income. A notice under

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Section 148 of the Income-tax Act was issued on 13.9.2002. The return filed on 30.11.2000 was considered as the return filed in response to notice under section 148 of the Act. In the said return the assessee claimed set off of capital gains amounting to Rs.10.57 lakhs against the brought forward unabsorbed depreciation. The assessee's explanation that prior to 1996 unabsorbed depreciation could be set off against any other head of income and could be carried forward individually. But as per the amendment under Finance Act, 1996 w.e.f. 01.04.1997 the cumulated unabsorbed depreciation brought forward as on 01.04.1997 could be set off against the taxable business profit or income under any other head for the assessment year 1997-98 and seven subsequent years was rejected and the assessing officer brought the capital gains of Rs.10,51,894/- and assessed to tax and completed the assessment. Against that order, the assessee preferred an appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) upheld the order of the assessing officer and dismissed the appeal filed by the assessee on the ground that the unambiguous amended provision did not support the case of the assessee. Against that order, the assessee preferred an appeal before the Income-tax Appellate Tribunal. The Income-tax Appellate Tribunal accepted the view of the assessee and remitted the case to the assessing officer for verification as to how much depreciation was available upto 1.4.1997, that could be allowed against the income of the assessee. The correctness of the said order is canvassed by the revenue by filing the present appeal by formulating the following question of law.

> "Whether on the facts and in the circumstances of the case the Income-tax Appellate tribunal was right in law in remitting back the matter to the file of the assessing officer for verification, even though the law laid down by clear and unambiguous words in section 32(2), is applicable to the assessment year 2000-01?"

3. We heard the argument of the learned counsel for the revenue and perused the materials on record.

4. We are not able to see any illegality or irregularity in the order of the Tribunal, as contended by the learned Senior Standing Counsel for the Revenue. As per the amended provisions of section 32 (2) of the Act, with effect from 01.04.1997, if the income from business for the assessment year is insufficient to absorb the depreciation allowance of that assessment year, the amended provision permits absorption of depreciation allowance of a business against profits and gains of any other business of the same assessment year. When the depreciation allowance of a business of the assessment year is not absorbed by any other business of the same assessment year, then the remaining unabsorbed depreciation allowance could be set off against the income under any other head,

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that is assessable for the same assessment year. In the event of depreciation allowance of the year is unable to be absorbed by any other business income or from income under any other head in the same assessment year, the remaining unabsorbed depreciation allowance shall be carried forward to the following year and (a) unabsorbed allowance shall be set off against the profits and gains of any business carried by a person. (b) If the unabsorbed depreciation allowance cannot be wholly set off so, it shall be allowed to be carried forward for the following eight assessment years immediately succeeding the assessment year in which it was first computed. The proviso provides that the business to which depreciation allowance is related to must be carried on in the succeeding year so as to allow such set off. Thus, by the amendment, the deeming fiction of treating the earlier years' unabsorbed depreciation as current year depreciation was removed. The period available for absorbing the unabsorbed depreciation against the profit of the succeeding years was limited to eight years. The clarification of the Finance Minister in the Parliament is also to the effect that inasmuch as the cumulated unabsorbed depreciation brought forward as on 01.04.1997 could still be set off against the taxable business profit or income under any other head for the assessment year 1997-98 and seven subsequent years vide 222 ITR (stat) 36. Circular of the Central Board of Direct Taxes No.762 dated 18.02.1998 (230 ITR (stat) 12) also clarifies the issue to the following effect :

> "Sub-section (2) of section 32, as it existed upto assessment year 1996-97, provided that the unabsorbed depreciation of a year shall be added to the amount of the allowance for depreciation of the following previous year and deemed to be part of that allowance. Therefore, the unabsorbed depreciation allowance, if any, of the assessment year 1996-97 shall be added to the amount of the allowance for depreciation of assessment year 1997-98 and deemed to be part of the allowance for this year. In other words, the unabsorbed depreciation allowance of assessment year 1996-97 shall be added to the allowance of 1997-98 and will be deemed to be the allowance of that year. The limitation of eight years shall start from the assessment year 1997-98."

5. In view of the above position of law, we are of the view that the Tribunal has rightly come to the conclusion that the assessee is entitled to the unabsorbed depreciation brought forward as on 01.04.1997 and could be set off against the business profits and in order to give effect to that finding, the case was remitted to the file of the assessing officer for verification as to how much depreciation was available upto 01.04.1997 that could be included in the income of the assessee.

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6. For the fore-going reasons, the appeal is dismissed as no question of law, much less a substantial question of law is involved.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Asst.Registrar,
   Income-tax Appellate
   Tribunal, Rajaji Bhavan, III Floor,
   Besant Nagar, Chennai

2. The Commissioner of
   Income-tax (Appeals) - V
   Chennai

3. The Asst.Commissioner
   of Income-tax
   Company Circle V(2),
   Chennai- 34.

4. The Commissioner of Income Tax,
Tamilnadu III
Chennai.

1 cc to M/s. Pushya Sitaraman, SC for IT Department SR.69530

Tax Case (Appeal)
No.1423 of 2007

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